

Assembly Bill No. 1662

CHAPTER 447

An act to add Sections 195.167, 195.168, 195.169, 218.4, 17207.6, and 24347.9 to the Revenue and Taxation Code, relating to disaster relief, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2010. Filed with
Secretary of State September 29, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1662, Portantino. Disaster relief.

(1) Existing law authorizes a county board of supervisors to provide by ordinance for the reassessment of property that is damaged or destroyed, without fault on the part of the assessee, by a major misfortune or calamity, upon the application of the assessee or upon the action of the county assessor with the board's approval. With respect to certain counties that have adopted reassessment ordinances and have been declared by the Governor to be in a state of emergency as a result of certain events, existing law provides for state allocations of the estimated amounts of the reductions in property tax revenues resulting in certain fiscal years from reassessments under those ordinances. Existing law also continuously appropriates, without regard to fiscal years, moneys in the Special Fund for Economic Uncertainties for purposes of funding these state allocations.

This bill would provide for similar state allocations with respect to property tax revenue reductions resulting from a reassessment for damages incurred within the Counties of Calaveras, Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Francisco, and Siskiyou, which were declared by the Governor to be in a state of emergency due to the severe winter storms that commenced in January 2010.

By requiring moneys continuously appropriated from the Special Fund for Economic Uncertainties to be allocated for the new purpose of reimbursing the Counties of Calaveras, Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Francisco, and Siskiyou for these property tax revenue reductions, this bill would make an appropriation.

(2) Existing property tax law provides, pursuant to a specified provision of the California Constitution, for a homeowners' property tax exemption in the amount of \$7,000 of the full value of a "dwelling," as defined.

This bill would provide that any dwelling that qualified for the exemption prior to the commencement dates of the wildfires listed in the Governor's proclamations of August 2009, that was damaged or destroyed by the wildfires in the Counties of Los Angeles and Monterey, and that has not changed ownership since the commencement dates of those disasters as

listed in the proclamations, may not be denied the exemption solely on the basis that the dwelling was temporarily damaged or destroyed or was being reconstructed by the owner, or was temporarily uninhabited as a result of restricted access to the property due to wildfires.

This bill would also provide that any dwelling that qualified for the exemption prior to the commencement dates of the severe storms listed in the Governor's proclamations of January 2010, that was damaged or destroyed by the severe rainstorms, heavy snows, floods, or mudslides that occurred in the Counties of Calaveras, Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Francisco, and Siskiyou, and that has not changed ownership since the commencement dates of those disasters as listed in the proclamations, may not be denied the exemption solely on the basis that the dwelling was temporarily damaged or destroyed or was being reconstructed by the owner, or was temporarily uninhabited as a result of restricted access to the property due to floods, mudslides, rock slides, or washed-out or damaged roads.

This bill would also provide that any dwelling that qualified for the exemption prior to August 30, 2009, that was damaged or destroyed by the wildfires in the County of Placer, as declared by the Governor to be in a state of emergency in August 2009, and that has not changed ownership since August 30, 2009, or qualified for the exemption prior to July 26, 2010, that was damaged or destroyed by the wildfires in the County of Kern, as declared by the Governor to be in a state of emergency in July 2010, and that has not changed ownership since July 26, 2010, may not be denied the exemption solely on the basis that the dwelling was temporarily damaged or destroyed or was being reconstructed by the owner, or was temporarily uninhabited as a result of restricted access to the property due to wildfires.

The California Constitution requires the Legislature, in each fiscal year, to reimburse local governments for the revenue losses incurred by those governments in that fiscal year as a result of the homeowners' property tax exemption.

This bill would state the intent of the Legislature to make this required reimbursement in the annual Budget Act. By requiring local tax officials to implement new exemption criteria, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(3) The Personal Income Tax Law and the Corporation Tax Law provide for the carryover to specified taxable years of specified losses sustained as a result of certain disasters occurring in California in an area determined by the President of the United States to warrant specified federal assistance, or proclaimed by the Governor to be in a state of emergency.

This bill would extend these provisions to losses sustained in the Counties of Los Angeles, Monterey, and Placer as a result of the wildfires that commenced in August 2009, losses sustained in the County of Kern as a result of the wildfires that commenced in July 2010, and losses sustained in the Counties of Calaveras, Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Francisco, and Siskiyou as a result of the severe winter storms that commenced in January 2010. This bill would authorize a taxpayer to make an election to claim a deduction for those losses on the tax return for the preceding year.

(4) This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 195.167 is added to the Revenue and Taxation Code, to read:

195.167. (a) By October 30, 2010, the auditors of the Counties of Calaveras, Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Francisco, and Siskiyou, which were the subject of the Governor's proclamations of a state of emergency for the severe winter storms that commenced in January 2010 that caused damage by the severe rainstorms, heavy snows, floods, or mudslides, shall certify to the Director of Finance an estimate of the total amount of the reduction in property tax revenues on both the regular secured roll and the supplemental roll for the 2009–10 fiscal year resulting from the reassessment by the county assessor pursuant to paragraph (1) of subdivision (a) of Section 170 of those properties that are eligible properties as a result of those disasters, except that the amount certified shall not include any estimated property tax revenue reductions to school districts, other than basic state aid school districts, and county offices of education.

(b) For purposes of this section, "basic state aid school district" means any school district that does not receive a state apportionment pursuant to subdivision (h) of Section 42238 of the Education Code, but receives from the state only a basic apportionment pursuant to Section 6 of Article IX of the California Constitution.

SEC. 2. Section 195.168 is added to the Revenue and Taxation Code, to read:

195.168. After the county auditor of the eligible county, as described in Section 195.167, has made the applicable certification to the Director of Finance pursuant to that section, the director shall, within 30 days after verification of the county auditor's estimate, certify this amount to the Controller for allocation to the county. Upon receipt of certification from the Director of Finance, the Controller shall make the appropriate allocation to the county within 10 working days.

SEC. 3. Section 195.169 is added to the Revenue and Taxation Code, to read:

195.169. (a) On or before June 30, 2011, an eligible county, as described in Section 195.167, shall compute and remit to the Controller for deposit in the General Fund an amount equal to the amount allocated to it by the Controller pursuant to Section 195.168, less the actual amount of its property tax revenue lost on the regular secured and supplemental rolls with respect to those eligible properties described in Section 195.167 as a result of the reassessment of those properties pursuant to paragraph (1) of subdivision (a) of Section 170, excluding any property tax revenue lost by school districts, other than basic state aid school districts, and county offices of education. If the actual amount of property tax revenue lost by an eligible county in the immediately preceding fiscal year, as described and limited in the preceding sentence, exceeds the amount allocated by the Controller to that county pursuant to Section 195.168, the Controller shall allocate the amount of that excess to that eligible county.

(b) For purposes of this section, “basic state aid school district” means any school district that does not receive a state apportionment pursuant to subdivision (h) of Section 42238 of the Education Code, but receives from the state only a basic apportionment pursuant to Section 6 of Article IX of the California Constitution.

SEC. 4. Section 218.4 is added to the Revenue and Taxation Code, to read:

218.4. (a) For purposes of this section, all of the following apply:

(1) “Owner” includes a person purchasing the dwelling under a contract of sale or who holds shares or membership in a cooperative housing corporation, which holding is a requisite to the exclusive right of occupancy of a dwelling.

(2) (A) “Dwelling” means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, and any land on which it may be situated. A two-dwelling unit shall be considered as two separate single-family dwellings.

(B) “Dwelling” includes the following:

(i) A single-family dwelling occupied by an owner thereof as his or her principal place of residence on the lien date.

(ii) A multiple-dwelling unit occupied by an owner thereof on the lien date as his or her principal place of residence.

(iii) A condominium occupied by an owner thereof as his or her principal place of residence on the lien date.

(iv) Premises occupied by the owner of shares or a membership interest in a cooperative housing corporation, as defined in subdivision (i) of Section 61, as his or her principal place of residence on the lien date. Each exemption allowed pursuant to this subdivision shall be deducted from the total assessed valuation of the cooperative housing corporation. The exemption shall be taken into account in apportioning property taxes among owners of share or membership interests in the cooperative housing corporations so as to benefit those owners who qualify for the exemption.

(b) Any dwelling that qualified for an exemption under Section 218 prior to the commencement dates of the wildfires listed in the Governor’s disaster proclamation of August 2009, that was damaged or destroyed by the wildfires and any other related casualty that occurred as a result of this disaster in the Counties of Los Angeles and Monterey, as declared by the Governor in August 2009, and that has not changed ownership since the commencement dates of these disasters as listed in the proclamations, shall not be disqualified as a “dwelling” or be denied an exemption under Section 218 solely on the basis that the dwelling was temporarily damaged or destroyed or was being reconstructed by the owner, or was temporarily uninhabited as a result of restricted access to the property due to the wildfires.

(c) Any dwelling that qualified for an exemption under Section 218 prior to August 30, 2009, that was damaged or destroyed by the wildfires and any other related casualty that occurred as a result of this disaster in the County of Placer, as declared by the Governor in August 2009, and that has not changed ownership since August 30, 2009, shall not be disqualified as a “dwelling” or be denied an exemption under Section 218 solely on the basis that the dwelling was temporarily damaged or destroyed or was being reconstructed by the owner, or was temporarily uninhabited as a result of restricted access to the property due to the wildfires.

(d) Any dwelling that qualified for an exemption under Section 218 prior to the commencement dates of the severe winter storms listed in the Governor’s disaster proclamations of January 2010, that was damaged or destroyed by the severe rainstorms, heavy snows, floods, or mudslides that occurred as a result of these disasters in the Counties of Calaveras, Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Francisco, and Siskiyou, as declared by the Governor in January 2010, and that has not changed ownership since the commencement dates of these disasters as listed in the proclamations, shall not be disqualified as a “dwelling” or be denied an exemption under Section 218 solely on the basis that the dwelling was temporarily damaged or destroyed or was being reconstructed by the owner, or was temporarily uninhabited as a result of restricted access to the property due to floods, mudslides, rockslides, or washed-out or damaged roads.

(e) Any dwelling that qualified for an exemption under Section 218 prior to July 26, 2010, that was damaged or destroyed by the wildfires and any other related casualty that occurred as a result of the disaster in the County of Kern, as declared by the Governor in July 2010, and that has not changed ownership since July 26, 2010, shall not be disqualified as a “dwelling” or be denied an exemption under this section solely on the basis that the dwelling was temporarily damaged or destroyed or was being reconstructed by the owner, or was temporarily uninhabited as a result of restricted access to the property due to the wildfires.

(f) The exemption provided for in subdivision (k) of Section 3 of Article XIII of the California Constitution shall first be applied to the building, structure, or other shelter and the excess, if any, shall be applied to any land on which it may be located.

SEC. 5. Section 17207.6 is added to the Revenue and Taxation Code, to read:

17207.6. (a) An excess disaster loss, as defined in subdivision (c), shall be carried to other taxable years as provided in subdivision (b), with respect to losses resulting from any of the following disasters:

(1) Any loss sustained in the Counties of Los Angeles and Monterey as a result of wildfires that commenced in August 2009.

(2) Any loss sustained in the County of Placer as a result of wildfires that commenced in August 2009.

(3) Any loss sustained in the Counties of Calaveras, Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Francisco, and Siskiyou as a result of winter storms that commenced in January 2010.

(4) Any loss sustained in the County of Kern as a result of the wildfires that commenced in July 2010.

(b) (1) In the case of any loss allowed under Section 165(c) of the Internal Revenue Code, relating to limitation of losses of individuals, any excess disaster loss shall be carried forward to each of the five taxable years following the taxable year for which the loss is claimed. However, if there is any excess disaster loss remaining after the five-year period, then the applicable percentage, as set forth in paragraph (1) of subdivision (b) of Section 17276, of that excess disaster loss shall be carried forward to each of the next 10 taxable years.

(2) The entire amount of any excess disaster loss as defined in subdivision (c) shall be carried to the earliest of the taxable years to which, by reason of subdivision (b), the loss may be carried. The portion of the loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of excess disaster loss over the sum of the adjusted taxable income for each of the prior taxable years to which that excess disaster loss is carried.

(c) "Excess disaster loss" means a disaster loss computed pursuant to Section 165 of the Internal Revenue Code which exceeds the adjusted taxable income of the year of loss or, if the election under Section 165(i) of the Internal Revenue Code is made, the adjusted taxable income of the year preceding the loss.

(d) The provisions of this section and Section 165(i) of the Internal Revenue Code shall be applicable to any of the losses listed in subdivision (a) sustained in any county or city in this state which was proclaimed by the Governor to be in a state of disaster.

(e) Losses allowable under this section may not be taken into account in computing a net operating loss deduction under Section 172 of the Internal Revenue Code.

(f) For purposes of this section, "adjusted taxable income" shall be defined by Section 1212(b)(2)(B) of the Internal Revenue Code.

(g) For losses described in subdivision (a), the election under Section 165(i) of the Internal Revenue Code may be made on a return or amended return filed on or before the due date of the return (determined with regard to extension) for the taxable year in which the disaster occurred.

SEC. 6. Section 24347.9 is added to the Revenue and Taxation Code, to read:

24347.9. (a) An excess disaster loss, as defined in subdivision (c), shall be carried to other taxable years as provided in subdivision (b), with respect to losses resulting from any of the following disasters:

(1) Any loss sustained in the Counties of Los Angeles and Monterey as a result of wildfires that commenced in August 2009.

(2) Any loss sustained in the County of Placer as a result of wildfires that commenced in August 2009.

(3) Any loss sustained in the Counties of Calaveras, Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Francisco, and Siskiyou as a result of winter storms that commenced in January 2010.

(4) Any loss sustained in the County of Kern as a result of the wildfires that commenced in July 2010.

(b) (1) In the case of any loss allowed under Section 165 of the Internal Revenue Code, relating to losses, any excess disaster loss shall be carried forward to each of the five taxable years following the taxable year for which the loss is claimed. However, if there is any excess disaster loss remaining after the five-year period, then the applicable percentage, as set forth in paragraph (1) of subdivision (b) of Section 24416, of that excess disaster loss shall be carried forward to each of the next 10 taxable years.

(2) The entire amount of any excess disaster loss as defined in subdivision (c) shall be carried to the earliest of the taxable years to which, by reason of subdivision (b), the loss may be carried. The portion of the loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of excess disaster loss over the sum of the net income for each of the prior taxable years to which that excess disaster loss is carried.

(c) "Excess disaster loss" means a disaster loss computed pursuant to Section 165 of the Internal Revenue Code, which exceeds the net income of the year of loss or, if the election under Section 165(i) of the Internal Revenue Code is made, the net income of the year preceding the loss.

(d) The provisions of this section and Section 165(i) of the Internal Revenue Code shall be applicable to any of the losses listed in subdivision (a) sustained in any county or city in this state which was proclaimed by the Governor to be in a state of disaster.

(e) Any corporation subject to the provisions of Section 25101 or 25101.15 that has disaster losses pursuant to this section, shall determine the excess disaster loss to be carried to other taxable years under the principles specified in Section 25108 relating to net operating losses.

(f) Losses allowable under this section may not be taken into account in computing a net operating loss deduction under Section 172 of the Internal Revenue Code.

(g) For losses described in subdivision (a), the election under Section 165(i) of the Internal Revenue Code may be made on a return or amended return filed on or before the due date of the return (determined with regard to extension) for the taxable year in which the disaster occurred.

SEC. 7. It is the intent of the Legislature to provide in the annual Budget Act those additional reimbursements to local governments that, as a result of Section 4 of this act, are required by Section 25 of Article XIII of the California Constitution.

SEC. 8. The Legislature finds and declares that this act fulfills a statewide public purpose because of all of the following:

(a) The Governor of California has officially proclaimed a state of emergency declaring that the wildfires that occurred within the Counties of Los Angeles, Monterey, and Placer, commencing in August 2009, and within the County of Kern, commencing in July 2010, constitute conditions of extreme peril to public health and safety to persons and property within that county, thus qualifying affected persons for various forms of governmental assistance and relief.

(b) The Governor of California has officially proclaimed a state of emergency declaring that the winter storms that occurred within the Counties of Calaveras, Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Francisco, and Siskiyou, commencing in January 2010, constitute conditions of extreme peril to public health and safety to persons and property within that county, thus qualifying affected persons for various forms of governmental assistance and relief.

(c) This act is consistent with, and supplements, the proclaimed disaster assistance and relief by providing necessary fiscal assistance and tax relief to affected jurisdictions and persons to allow them to maintain essential basic services and repair damage to, and restore, their homes and businesses.

SEC. 9. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to timely provide essential relief to those persons and jurisdictions that have suffered damage or loss as a result of the wildfires that occurred within the Counties of Los Angeles, Monterey, and Placer, commencing in August 2009, and within the County of Kern, commencing in July 2010, or as a result of the severe winter storms that occurred in the Counties of Calaveras, Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Francisco, and Siskiyou, commencing in January 2010, that were the subject of the Governor's proclamations of a state of emergency, it is necessary that this act take effect immediately.